

**Response to Office Action and Submission  
of Terminal Disclaimer Under 37 C.F.R. § 1.321 (b)  
USSN 09/903,685**

**REMARKS**

Claims 46-56 are pending. Claims 46-56 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being obvious over claims of U.S. Patent No. 6,284,193 B1 ("the '193 patent"). As demonstrated by the attached Notice of Recordation of Assignment documents, and the enclosed statement under 37 C.F.R. § 3.73 (b), the '193 patent and the present application are both owned by Cosmed Group, Inc. Without commenting on the substance of the rejection, Applicants submit herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent signed by the assignee of the record of the entire interest.

Because the only rejection is obviated by this submission, this application is believed to be in condition for allowance. Such action is respectfully requested. Should the Examiner not deem the present application in condition for allowance, the Examiner is invited to contact the undersigned at (703) 744-8029 to discuss any matter relating to this application.

A check in the amount of \$55.00 is enclosed to cover the fee required under 37 C.F.R. § 1.321(b), as set forth in 37 CFR. § 1.20 (d) for a small entity.

Because this response is being submitted within the three month shortened statutory period, it is believed that no other fee is required in connection with this filing. If, however any fees are deemed necessary, including any fee under 37 C.F.R. § 1.136 for any extension of time to make the present filing timely, please charge any additional fees and credit any overpayments to Deposit Account No. 50-2228. Further, if these papers are not considered timely filed, then a request is hereby made under 37 C.F.R. § 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Dated: January 9, 2004

Respectfully submitted,

By 

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